

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

CYNTHIA L. BOREN,

Plaintiff,

v.

JO ANNE B. BARNHART, Commissioner of  
Social Security,

Defendant.

Case No. 04-5182 FDB

ORDER ADOPTING REPORT AND  
RECOMMENDATION

The Magistrate Judge recommends that this matter be reversed and remanded for further administrative proceedings because there still remains an issue regarding Plaintiff's ability to do other jobs existing in significant numbers in the national economy prior to October 9, 2002. During the August 13, 2003 hearing, the ALJ posed a flawed hypothetical which did not include all of Plaintiff's limitations. Relying in part on the answer to the flawed hypothetical, the ALJ improperly concluded Plaintiff was not disabled.

Plaintiff has filed objections wherein she restates her contentions that the second ALJ improperly decided not to re-open the prior ALJ's decision; the second ALJ improperly disregarded the opinion of Dr. W. Brian Kirkham, Plaintiff's treating physician; and the second ALJ erred in assessing Plaintiff's credibility. Plaintiff further contends the decision of the Magistrate Judge as it

1 applied to *res judicata* is in error because it fails to properly interpret the *res judicata* rules  
2 established by the 9<sup>th</sup> Circuit Court of Appeals and omits any discussion of the applicable  
3 administrative rules established by the SSA regarding reopening prior disability benefits. Moreover,  
4 Plaintiff contends the Magistrate Judge is in error because the report and recommendation concludes  
5 that initial and reconsideration denial notice forms that were sent to Plaintiff concerning her second  
6 application should have put Plaintiff on notice of the risk of filing a new application versus appealing  
7 the Commissioner's decision.


8 The Court having reviewed the Report and Recommendation, the Plaintiff's objections,  
9 Defendant's response, and being fully advised, concludes that Plaintiff's objections are not well  
10 taken.

11 ACCORDINGLY;

12 IT IS ORDERED:

- 13 (1) The Court adopts the Report and Recommendation;  
14 (2) The complaint is reversed and remanded for further administrative proceedings;  
15 (3) The Clerk is directed to send copies of this Order to Plaintiff, Defendants, and to the  
16 Hon. Karen L. Strombom.

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19 DATED this 13<sup>th</sup> day of June, 2005.

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22 FRANKLIN D. BURGESS  
23 UNITED STATES DISTRICT JUDGE  
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